

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Comply  
with the Mandates of Senate Bill 1563  
regarding deployment of Advanced  
Telecommunications Technologies.

FILED  
PUBLIC UTILITIES COMMISSION  
APRIL 3, 2003  
SAN FRANCISCO OFFICE  
RULEMAKING 03-04-003

**ORDER INSTITUTING RULEMAKING**

**I. Introduction**

The Commission initiates this proceeding in response to Senate Bill (SB) 1563 (Ch. 674, Stats. 2002), which amended Pub. Util. Code § 709 and added Pub. Util. Code Section 709.3. A copy of SB 1563 is attached to this Order Instituting Rulemaking (OIR) as Attachment A. SB 1563 requires the Commission to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure and to submit a report of its findings and recommendations to the Legislature by December 31, 2004. This rulemaking charts a course for that undertaking and report.

**II. Scope of This Proceeding**

**A. SB 1563**

SB 1563, in conjunction with companion legislation, SB 1863, amends Section 709 to state that the policies for telecommunications in California are as follows:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.
- (e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.
- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.
- (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.
- (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

SB 1563 and SB 1863 add items (b), (c), (d), and (h) to this list of policy goals.

This bill states its intent to bridge the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians, and encouraging fair treatment of consumers through consumer-oriented conduct. In this context, the bill requires the Commission to convene a proceeding to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure. It requires us to encourage participation from a broad cross section of the communications industries, including those entities that the commission does not regulate, as well as users and community representatives. The bill also requires the commission to encourage participation by community-based organizations, including nonprofit community technology programs and libraries.

The bill further requires us to submit a report to the Governor and the Legislature no later than December 31, 2004, of our findings and recommendations regarding the plan. The report should identify factors preventing the ubiquitous availability and use of advanced communications services, and assess the consequences of and develop strategies for addressing this inadequacy while encouraging the deployment of adequate investment.

#### **B. Related Commission Decisions**

The Commission has recently addressed certain related issues in an OIR (R.01-05-046) and report submitted to the Legislature on August 14, 2002, in response to SB 1712 (Ch. 943, Stats. 2000). SB 1712 required the Commission to investigate the viability of redefining universal service to include high-speed Internet access and report its findings to the Legislature, following public hearings around the state. This OIR was commenced on May 24, 2001.

The Commission’s SB 1712 report, titled “Broadband Services as a Component of Basic Telephone Service,” found that aggressively deploying

broadband services in California would be prohibitively expensive to all customers, including low-income customers. It observed that “dial up” service for Internet access is available for any customers with basic telephone service.

Decision (D.) 02-10-060 expressed the Commission’s intent to modify the California Teleconnect Fund (CTF) to make broadband discounts and services to community-based organizations (CBOs) and government owned health facilities the same as those offered to schools and libraries. We also intend to implement the requirement of SB 1863, expanding CBO eligibility to participate in the CTF program. We expect to implement these changes to the CTF program in early May or June 2003.

### **C. Issues**

SB 1563 finds that telecommunications policy in California includes the following:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

- (e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.
- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.
- (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.
- (h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

In recognition of these policies, SB 1563 directs the Commission to develop a plan “for encouraging the widespread use of advanced communications infrastructure.” The bill finds that “the mission of the plan is to identify factors preventing the ubiquitous availability and use of advanced communications services, assess the consequences of, and develop strategies for, addressing these factors while encouraging the deployment of adequate investment for advanced communications infrastructure that serves the public good,” consistent with the policies it specifies.

Based on the legislation, we identify the following as issues that should be explored in this proceeding:

Existing barriers to the ubiquitous availability and use of advanced telecommunications technology;

Whether new telecommunications technologies or the cost of existing technologies have changed in ways that would make them more economical to deploy statewide;

Whether and how telecommunications technologies and their cost are expected to change in the future in ways that would make them more economical to deploy statewide;

Whether the Commission can or should direct changes in technologies, their deployment or related infrastructure in ways that would promote more ubiquitous availability;

Whether and how existing programs promote the availability and use of advanced telecommunications technology for inner-city, low-income, and disabled Californians;

Whether and how open and competitive markets for advanced communications technologies can encourage greater efficiency, low prices and more consumer choice;

Whether and how identified technologies may promote economic growth, job creation and social benefits;

The adequacy of current efforts to provide educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services; and

Whether existing law and policy encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

This OIR will not review: (1) the cost model for the California High Cost Fund-B (CHCF-B) or the adopted rules for the CHCF-B (Appendix B, Rule 6 in Decision (D.) 96-10-066); (2) the specific rules for ULTS set forth in Appendix B, Rule 5 of D.96-10-066; and (3) Rules 7 (Universal Service Working Group) and 9 (Consumer Information) in Appendix B of D.96-10-066.

### **III. Scoping Memo**

#### **A. Issues and Comments by Parties**

This rulemaking provides the scope of issues to be addressed in this proceeding. We solicit an initial round of opening and reply comments from a broad group consistent with the requirements of SB 1563 and to ensure a thorough examination of the issues. Parties should file their opening comments within 60 days of the mailing date of this rulemaking. Those comments will also be the parties' opportunity, under Rule 6(c)(2) of the Commission's Rules of Practice and Procedure, to respond to the preliminary categorization, need for hearing, and the issues raised in this preliminary scoping memo. Reply comments shall be filed and served within 20 days of the date for opening comments.

After reviewing the comments, the assigned Administrative Law Judge (ALJ) or Commissioner will inform the parties of additional procedural steps. At this time, the Commission does not anticipate a need for evidentiary hearings. However, any party who believes evidentiary hearings are required shall make a request in their opening comments and identify the specific topics they believe require hearings and the nature of evidence they would present. While this does not ensure hearings will be held, a failure to make a timely request for hearings will be deemed a waiver of the right to make such a request.

#### **B. Service to Identified Groups and Official Service List**

SB 1563 directs the Commission to encourage participation that includes "a broad cross section of the communications industries...(telecommunications) users and community representatives...community-based organizations, including...nonprofit community technology programs and libraries that have demonstrated success

in assisting low-income residents in bridging the digital divide.” To satisfy this objective, we serve this order on CBOs and libraries that have participated in the California Teleconnect Fund programs and others for whom we have information. We also serve all cities and counties in the state.

Parties may be included on the official service list of this proceeding by sending a letter to the Commission’s Process Office, 505 Van Ness Avenue, San Francisco, California 94102 or sending an e-mail to the assigned ALJ within 15 days of the mailing date of this OIR. Each request should include the party’s name, the name of its representative (if any), address, and telephone and facsimile numbers, an e-mail address or a statement that they have no e-mail address. The Commission will create a service list and post it on the Commission’s Web Site at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

Those persons who do not want to be parties, and only want notice of the hearings, rulings, proposed decisions, and decisions should request inclusion on the “information only” portion of the service list. Parties do not need to serve the “information only” service list with pleadings.

Those persons employed by the State of California who are interested in this proceeding may request that they be added to the “state service” section of the service list. Parties are obligated to serve all documents they may submit or file in this proceeding on all names appearing on the state service list.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor Office in Los Angeles at (213) 576-7055, e-mail at [public.advisor.la@cpuc.ca.gov](mailto:public.advisor.la@cpuc.ca.gov) or in San Francisco (415) 703-2074, e-mail at [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov) for assistance.



#### **IV. Proceeding Designation and Ex Parte Communications**

This proceeding is designated as “quasi-legislative” consistent with Pub. Util. Code § 1701.1(c)(1). Rules 7(a)(4) and 7(d) of the Commission’s Rules of Practice and Procedure provide that ex parte communications are permitted in this quasi-legislative proceeding without restriction or reporting requirements unless and until the Commission modifies this determination of category.

**IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission’s own motion to address the requirements of Senate Bill 1563 (Ch. 674, Stats. 2002) (Pub. Util. Code § 709). The focus of this rulemaking will be the topics identified in this order unless modified by the Commission, Assigned Commissioner or assigned Administrative Law Judge.
2. This rulemaking is preliminarily categorized as quasi-legislative as that term is defined in Rule 5(d) of the Commission’s Rules of Practice and Procedure.
3. Persons interested in having their names added to the service list for this proceeding shall follow the procedures described in this order.
4. Parties interested in providing comments regarding the topics of this rulemaking shall file and serve their comments on or before 60 days from the date of mailing of this order in accordance with the Commission’s Rules of Practice and Procedure and the procedures described in this order.
5. The opening comments will be the parties’ opportunity, under Rule 6(c)(2) of the Commission’s Rules of Practice and Procedure, to respond to the preliminary categorization, need for hearing, and preliminary scoping memo set forth in this Order Instituting Rulemaking.
6. This order shall be posted at the Commission’s Web Site and served by regular mail on all of the following:

- a. All telecommunications carriers holding certificates of public convenience and necessity or wireless registration.
- b. All parties to Rulemaking (R.) 95-01-020 and Investigation 95-01-021 and to R.01-05-046.

c. All cities and counties.

d. The following state agencies:

Trade and Commerce Agency  
Business, Transportation and Housing Agency  
State and Consumer Services Agency  
Department of Information Technology  
State Department of Education  
State Department of Health Services  
California State Library

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

**ATTACHMENT A**

BILL NUMBER: SB 1563      CHAPTERED  
BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(c) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(d) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(e) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(f) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

(g) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

SEC. 2. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.

(b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.

(c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(e) To promote economic growth, job creation, and the substantial

social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

(h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

SEC. 3. Section 709.3 is added to the Public Utilities Code, to read:

709.3. (a) (1) No later than April 1, 2003, the commission shall convene a proceeding to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure. The proceeding shall encourage participation that includes a broad cross section of the communications industries, including those entities that the commission does not regulate, as well as users and community representatives. The commission shall also encourage participation by community-based organizations, including, but not limited to, nonprofit community technology programs and libraries that have demonstrated success in assisting low-income residents in bridging the digital divide.

(2) For the purposes of this section, "nonprofit community technology program" means a community-based nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and engages in diffusing technology into local communities and training local communities that have no access to, or have limited access to, the Internet and other technologies.

(b) The mission of the plan is to identify factors preventing the ubiquitous availability and use of advanced communications services, assess the consequences of, and develop strategies for, addressing these factors while encouraging the deployment of adequate investment for advanced communications infrastructure that serves the public good and is consistent with the policies described in Section 709.

(c) The commission shall submit a report of its findings and recommendations to the Governor and Legislature, not later than December 31, 2004.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 4. Section 2 of this bill incorporates amendments to Section 709 of the Public Utilities Code proposed by both this bill and SB 1863. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 709 of the Public Utilities Code, and (3) this bill is enacted after SB 1863, in which case Section 1 of this bill shall not become operative.

**(END OF ATTACHMENT A)**